IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

(1) S.B.CRIMINAL MISC. PETITION NO. 756/2004
(Yasha Maheshwari Vs. M/s Arihant Pharma Ors.)

(2) S.B.CRIMINAL MISC. PETITION NO. 1097/2004
(Yasha Maheshwari Vs. M/s Arihant Pharma Ors.)

Date of Order : 24/07/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Usman Ghani for the petitioner.
Mr. Ashok Upadhyay, public prosecutor.
Mr. Sandeep Mehta for the non-petitioners No.1 and 2.

BY THE COURT:-

By Criminal Misc. Petition No. 756/04, the petitioner complainant has assailed the order dated 29.5.2004 passed by Special Judge, SC/ST (Prevention of Atrocities) Act Cases, Bhilwara (for short 'the revisional court' hereinafter), and by Criminal Misc. Petition No. 1097/04, the petitioner has challenged the order dated 29.5.2004 passed by the very revisional court. Since both the petitions arise between the same parties and involve common question of law and facts, therefore, with the consent of counsel for the parties, both the petitions are being heard and decided together.

On a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act' hereinafter) filed by the petitioner against no-petitioners No. 1 and 2 before the Additional Chief Judicial Magistrate, Bhilwara (for short 'the trial court' hereinafter), the trial court took the cognizance of the offence. That order came to be challenged by the non-petitioners No.1 and 2 before the revisional court by Revision No. 06/04. The revisional court set aside the order taking cognizance on the ground that the list of witnesses has not been filed as envisaged under Sub-Section (2) of Section 204 Cr.P.C., and consequently, the order framing charge dated 25.8.2003 also came to be set aside by order dated 29.5.2004 in Revision No.07/04. The subsequent order is outcome of the order passed in Revision No.06/04, whereby the revisional court set aside the order taking cognizance.

On careful perusal of the order impugned, it is more than clear that the revisional court committed serious illegality and material irregularity inasmuch as the list of witnesses is already on record filed by the petitioner and bears the presentation as also seal of the Court, but for the reasons best known to the Presiding Officer of the trial court, may be inadvertently or due to oversight, it does not bear the signature but it has not been disputed by either of the parties that before

the trial court, the list of witnesses was filed by the petitioner.

In the circumstances therefore, the order impugned dated 29.5.2004 passed in Criminal Revision No.06/2004 is erroneous and therefore, deserves to be set aside. The subsequent order in Revision No.07/04 is consequential order of the order passed in Criminal Revision No.06/04, and therefore, the same also deserves to be set aside.

Consequently, both the petitions are allowed. The orders impugned dated 29.5.2004 passed in Criminal Revisions No. 06/04 and 07/04 are hereby set aside. The complaint of the petitioner before the trial court is restored. The parties to appear before the trial court on 21.8.2006. Stay petition in Cr. Misc. Petition No.756/04 stands disposed of.

(H.R.PANWAR),J.

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